IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.442 OF 2006

M/s.Phils Heavy Engineering Pvt.Ltd. ...Petitioner.

vs.

1. Bharat Petroleum Corporation Ltd. & others. ...Respondents.

Mr.Sean Wassoodew, for Petitioner.

Mr.P.A.Sawant with Ms.S.John i/b. M.P.Savla & Co., for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 11th December,2006..

P.C.:-

1. This is a petition filed under Section 14 of the Arbitration and Conciliation Act for an order that the mandate of the Arbitrator by name Mr.P.S.Bhargava has come to an end. The facts that are relevant and material for deciding this petition are that admittedly there is an arbitration agreement between the petitioner and respondent no.1. As per that agreement, a power is given to the respondent no.2-the

Director (Marketing) to appoint an officer of the respondent no.1-Corporation as Arbitrator. Accordingly, on the dispute arising between the parties, by an order dated 6.8.2001 Mr.V.V.Ramamurthy, Executive Director (Corporate affairs) of the respondent no.1 was appointed as arbitrator. Out of the same contract between the parties, some other claims arose. Instead of invoking arbitration clause, the petitioner has filed summary suit no.309 of 2001 in this Court. It appears that in that suit a notice of motion was taken out being notice of motion no.1795 of 2001. That notice of motion was disposed of by consent order dated 17.1.2003. By consent of parties it is directed that the disputes which are raised in the suit between the parties should also be referred to the same Arbitrator viz. Mr.Ramamurthy who has already been appointed as arbitrator to decide the disputes which have arisen between the parties earlier. Thus, Mr.Ramamurthy was appointed as Arbitrator in two sets of disputes between the parties. The Arbitrator was directed to dispose of both the disputes within a period of two months. Admittedly, within the period of two months the disputes were not decided, but the parties by consent granted extension of time to the learned Arbitrator to decide the disputes. Ultimately, it appears that on 26.10.2005 the petitioner wrote a letter to the learned Arbitrator stating that he has not abide the time limit given by the High Court and that he is not proceeding to decide the disputes between the parties and to make the Award and therefore, he should withdraw from the

arbitration. By letter dated 31.10.2005 the Arbitrator Mr.Ramamurthy disputed that he has deliberately not made the award within the time fixed by the High Court and within the time extended by the parties. Nevertheless he stated that in view of the letter of the petitioner he is withdrawing from the arbitration. As a consequence the respondent no.2 Director by letter dated 4.11.2005 has appointed Mr.P.S.Bhargavs, Executive Director (Quality Control Cell) of the respondent no.1 as arbitrator in the place of Mr.Ramamurthy.

2. This petition has been filed by the petitioner basically challenging the validity of the appointment of Mr.P.S.Bhargava as arbitrator. According to the petitioner, because of the order dated 17.1.2003 the arbitration clause between the parties stood modified and the Director who gets power to appoint an Arbitrator lost that power because by consent the parties have modified the agreement. In the submission of the petitioner, therefore, the Director has no power to appoint an arbitrator. Therefore, the only question to be decided is “does the order dated 17.1.2003 results in modification of the arbitration clause so as to deprive the Director of the power to appoint an arbitrator”. I have already observed above that Mr.Ramamurthy to whom the parties have agreed to refer their disputes which are subject matter of the summary suit no.309 of 2001 was the arbitrator not appointed by the Court but by the Director as

per the arbitration clause. All that the parties have done by order dated 17.1.2003 is that they have agreed that said Mr.Ramamurthy will decide their disputes which are subject matter of suit 309 of 2001. Mr.Ramamurthy was not appointed as arbitrator by the Court. He was already appointed as arbitrator by the Director of Respondent no.1 pursuant to the arbitration clause between the parties. Even if, had the Court not made the order dated 17.1.2003 by consent of parties, the Director himself probably would have referred the dispute to said Mr.Ramamurthy who was already dealing with the disputes between the parties. In my opinion, therefore, the order dated 17.1.2003 does not deprive the Director of his power to appoint an arbitrator. Perusal of the Arbitration agreement between the parties shows that it provides in the event of arbitrator being unable to act as arbitrator for such any reason the Director Marketing shall appoint a substitute. That power by no stretch of imagination be said to have been taken away by order dated 17.1.2003. What has been done by the Director of the respondent no.1 in appointing Mr.P.S.Bhargava as Arbitrator is that he has exercised the power given by arbitration agreement to appoint substitute. If the facts are seen in their proper perception it becomes clear that one set of dispute, without intervention of the Court, was referred to Mr.Ramamurthy, for decision. By order dated 17.1.2003 this Court does not make any change in this regard except that this Court fixes different time limit for making of the Award. When

Mr.Ramamurthy withdrew himself as arbitrator by letter dated 31.10.2005, he also withdrew as arbitrator in relation to the disputes which were referred to him by the Director. Therefore, in any case, the Director of the respondent no.1 had power to appoint Mr.P.S.Bhargava as arbitrator in the place of Mr.Ramamurthy in relation to the disputes which stood referred to Mr.Ramamurthy by the order made by the Director without intervention of the Court. All that has been done by the Director is that he has also referred the disputes which are referred to Mr.Ramamurthy because of the order dated 17.1.2003 to Mr.P.S.Bhargava. The spirit behind the order of the Court dated 17.1.2003 is that one arbitrator should decide both the sets of disputes. Therefore, the order of the Director appointing Mr.P.S.Bhargava as arbitrator in relation to both the sets of disputes cannot be said to violate the order dated 17.1.2003 either in letter or in spirit.

3. Thereafter, a complaint is made before me that Mr.P.S.Bhargava who has been appointed on 4.11.2005 is also not proceeding with the matter. The submission on behalf of the respondent is that it is the petitioner itself which is not permitting Mr.P.S.Bhargava to proceed further in the matter. In these circumstances, therefore, it cannot be said that the mandate of Mr.P.S.Bhargava has come to an end.

4. One more aspect, in my opinion, which is relevant is that this petition is filed under sub-section (2) of Section 14 of the Arbitration and Conciliation Act for termination of the mandate of Mr.P.S.Bhargava. The submission of the petitioner is that Mr.P.S.Bhargava could not have been appointed as arbitrator. A controversy about the termination of mandate of the arbitrator can arise only after his appointment has taken effect. Therefore, a petition can be filed under sub-section (2) of Section 14 of the Act for declaration that mandate of the arbitrator has come to an end, only when the petitioner accepts that the appointment of that person as arbitrator was valid but because of some subsequent event the mandate has come to an end. But the case of the petitioner in this petition is that appointment of Mr.Bhargava to begin with as arbitrator is not valid. If that is so the petition filed under Section 14 of the Act will not be maintainable. Therefore, looking at the controversy from any point of view, the petition filed by the petitioner is frivolous and it appears from the submission made on behalf of the respondents that it was filed merely to stall the progress of the arbitration proceedings. In this view of the matter therefore, the petition is liable to be rejected and the petitioner is liable to pay compensatory cost to the respondent no.1. In the result, therefore, the petition fails and is rejected. The petitioner is directed to pay compensatory cost to the respondent no.1.